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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/977,664

10/15/2001

Robert D. Herpst

3468

26009

7590

08/29/2005

ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND, SC 29926

EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,664

Applicant(s)

HERPST, ROBERT D.

Examiner

Lyle A. Alexander

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 28 and 30-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 28 and 30-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20, 28,30-33,35-37 and 30-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims state the "substrate has not been precision optically polished". However, the specification in the last paragraph of page 5 through page 6 states the substrate is first optically polished using an optical cloth and polishing compound followed by water polishing. The specification does not teach an embodiment where the substrate is not polished.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20, 28,30-33,35-37 and 30-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite what is intended by "... supporting substrate has not been precision optically polished". It is not known what type of material is intended. Furthermore, the specification does not teach a substrate that has not been

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optically polished. See the above 35 USC 112 first paragraph rejections where it is noted the specification teach on page 5 through 6 optically polishing the substrate.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1-20, 28,30-33,35-37,30-44 and 46-53 are rejected under 35 U.S.C. 103(a) as being unpatentable Gagnon et al. (USP 5,764,355) in view of Persky et al., further in view of Applicants' admitted prior art (pages 3-8 of the original specification) or Izumi (USP 4,932,780).

Gagnon et al. teach an IR sample holder made of a first material that does not transmit IR radiation having an aperture containing a second material where the sample is applied that transmits IR radiation. Column 5 lines 33+ teach the second IR transmitting material may be glass, quartz or polymeric materials.

Gagnon et al. are silent to the claimed steps of forming the composition.

Persky et al. teach in columns 1-2 that it is known to use metal band saws to cut alkali-halide scintillator crystals. The taught saw has been read on the claimed sawing and the taught scintillator crystal. The taught sawing is inexpensive, fast and does not require sophisticated equipment.

It would have been within the skill of the art to modify Gagnon et al. and use a sawing method to cut the crystal to gain the above advantages.

The modified sample holder of Gagnon et al. is silent to the specifically claimed glass compositions of the glass, specifically the alkali halide such as potassium bromide/chloride and sodium chloride and if the glass is unpolished.

The court decided In re Leshin (125 USPQ 416) that selection of a material based upon its suitability of intended use would have been within the skill of the art in view of 35 USC 103.

Alkali halide crystal materials comprising potassium bromide/chloride or sodium chloride are well known in the art and advantageous because of their low cost, excellent optical properties and hardness.

It would have been within the skill of the art to modify Persky et al. and use an alkali halide crystal materials comprising potassium bromide/chloride or sodium chloride to gain the above advantages and in view of Leshin because selection a material based upon its suitability of intended use.

Applicants' state on pages 3-5 it is known in the art to place sample for IR analysis in highly polished crystal cuvettes. Page 5 in the second paragraph states that it is known in the art to use both polished and unpolished crystal blanks for IR analysis. The unpolished blanks are taught as costing less to manufacture than the polished.

Izumi teach in column 2 lines 24+ polishing KBr crystal is expensive and that a high polishing is needed for wavelengths other than the IR range.

It would have been within the skill fo the art to further modify the modified device of Gagnon et al. in view of Applicants' admitted prior art or Izumi and not polish the crystal to minimize the cost of production.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al. (USP 5,764,355) in view of Persky et al., further in view of Applicants' admitted prior art (pages 3-8 of the original specification) or Izumi (USP 4,932,780) together further in view of Marker et al. (4,855,110)

Sée Gagnon et al. (USP 5,764,355) in view of Persky et al., further in view of Applicants' admitted prior art (pages 3-8 of the original specification) or Izumi (USP 4,932,780).

The art is silent to the use of a carousel for containing the slide to interface with an analyzer.

Marker et al. teach the use of a carousel in an automated analyzer. The carousel has the advantages of providing immediate access to all of the samples, which enables "stat" analysis of an important sample. Automated analyzers have the additional advantages of reducing human error, lower labor costs and permit 24/7 operations.

It would have been within the skill of the art to modify Gagnon et al. (USP 5,764,355) in view of Persky et al., further in view of Applicants' admitted prior art (pages 3-8 of the original specification) or Izumi (USP 4,932,780) together further in view of Marker et al. and use a carousel engaged with an automated analyzer to gain the above advantages.

Response to Arguments

Applicant's arguments with respect to claims 1-20, 28,30-33,35-37 and 30-53 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander
Primary Examiner
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A handwritten signature in black ink, appearing to be 'LAX' or similar, located below the printed name of the examiner.